IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10809 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATAPRAI NARSIBHAI PATEL

Versus

A'BAD MUNI COMMISSIONER

Appearance:

Special Civil Application No. 10809 of 1993

MR BG JANI for Petitioner No. 1-17

MR MR ANAND for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioners, who are working as Nursing Tutor staff in the hospitals under the control and management of Ahmedabad Municipal Corporation & V.S. Hospital had preferred this Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order directing the respondents to revise

their pay-scale with effect from 1.1.1986 which is paid to the Nursing Tutor staff of the State Government.

2. The petitioners are working as Nursing Tutor staff in different hospitals such as V.S. Hospital, Sheth L.G. Hospital, Shardaben Hospital respectively. It is the contention of the petitioner that their pay-scales were revised as per the pay-scales, dearness allowance and other allowances payable to the Nursing staff employed by the State Government in the year 1973 by passing a resolution No. 125 dated 28.6.1973 and they were paid the salary which was paid to the nursing staff employed by the State Government. It is the contention of the petitioners that the nature of duties which are performed by them are similar to that of the Nursing Tutor staff employed by the State Government and the educational qualification, training and other criteria for appointing the Nursing Tutor are also the same. It is the contention of the petitioners that after the pay-scale revision done in the year 1973, another pay revision was done by the State Government revising the pay-scales of Nursing cadre by passing resolution on 1st June 1988 vide resolution pay-scales of nursing cadre was revised consequent upon the introduction of revised pay-scale under Gujarat Civil Services (Revision of Pay) Rules, 1987 and the State Government had revised the pay-scale of the nursing cadres in Gujarat with effect from 1.1.1986. It is the contention of the petitioners that by the aforesaid revision in pay-scale, the Nursing Tutor staff employed by the State Government were given the pay-scale of Rs. 455-700 to Rs. 1640-2900. However, the pay-scales of the petitioners employed by the respondent Corporation was revised from Rs. 455-700 to Rs. 1400-2380. It is the contention of the petitioners that as in the year 1973 the respondent Corporation by passing a resolution adopted to give same pay-scale to the petitioners which was being paid to the employees of the State Government and accordingly the respondent Corporation had maintained parity in fixing the pay-scale. However, while revising the pay-scales of Nursing Tutor staff employed by the respondent Corporation in the year 1988 with effect from 1.1.1986 there is a difference in the pay-scale and their pay-scale is lesser than that of the Nursing Tutor staff employed by the State Government and therefore the present Special Civil Application has been filed for an appropriate direction or order directing the respondents to revise their pay-scales at par with the Nursing Tutor staff employed by the State Government with effect from 1.1.1986. It is the contention of the petitioners that they have made various representations, but the

Corporation has not revised their pay-scales at par with the employees of the State Government and therefore the present Special Civil Application has been filed.

3. An affidavit-in-reply has been filed on behalf of the respondents affirmed by one Dr. H.S. Shah, Superintendent of V.S. General Hospital. It is stated in the said affidavit-in-reply that the petition is liable to be dismissed as 17 petitioners with different facts have preferred a common petition and the petitioners are serving in different hospitals. It is submitted that petitioners No. 1 to 8 are permanent employees of the V.S. Hospital, whereas petitioner No.9 is a temporary employee and not entitled to the benefits claimed by others. It is also submitted that so far as V.S. Hospital is concerned, it is run by a Trust and in absence of a Trust running the V.S. Hospital no relief can be granted in favour of the petitioners. It is also submitted on behalf of the respondents that the petitioners have not come out with clean hands and have not stated the correct facts. It is submitted that the resolution No. 125 dated 28.6.1973 was passed considering the specific situation arising out of the II Pay Commission Report accepted by the Government and that there is no permanent decision of any authority of the respondents or of the V.S. Hospital that the Nursing staff have to be paid the pay-scales payable to the State Government employees for all times to come. It is also further submitted in the reply that pay-scales of Nursing staff serving in the respondents were revised as per the award of the Hon'ble Statutory Arbitrator Shri G.S.Barot which was accepted by the petitioners and other members of the Nursing staff by expressing a written option in their behalf. It is submitted that the petitioners have not stated that their pay-scales were revised pursuant to the award passed by learned Statutory Arbitrator, Shri G.S. Barot and they have suppressed the aforesaid fact. It is also submitted that the petitioners have also not stated that they have given their written option accepting the award of the Arbitrator, Shri G.S. Barot. It is further submitted that after accepting the same as it was found subsequently that the State Government employees will be getting more salary, as an afterthought the present Special Civil Application has been filed. It is also submitted that as such service conditions of the Municipal Corporation and that of State Government are different and therefore the petitioners cannot claim the pay-scale which is paid to State Government employees.

4. Shri B.G. Jani, learned advocate appearing on behalf of the petitioners have reiterated what is stated

hereinabove. Mr. Jani has stated that as the Municipal Corporation in the year 1973 had decided to give the same pay-scale which was given to the employees of the State Government, by not revising the pay-scale in the year 1986 and not giving the pay-scale at par with the Nursing Tutor staff of the State Government, discriminatory treatment has been given to the petitioners . It is also submitted that the service conditions and educational qualifications are same and therefore the same pay-scale should be given to the petitioners. Shri Jani has relied upon the judgment of the Hon'ble Supreme Court in the case of Randhirsingh vs. Union of India, reported in 1982 (1) SCC 618 and Judgment in the case of Indersingh vs. Vyas Muni Mishra - J.T. 1987 (3) S.C. Page 384 and also a Judgment reported in AIR 1991 S.C. Page 1367 in support of his proposition with regard to equal pay for equal work.

5. On the other hand, Shri Dipak Raval, learned advocate appearing for Shri M.R. Anand, on behalf of the respondents had submitted that the petitioners have not come out with clean hands and have suppressed the material fact before this Court. He has submitted that the petitioners's pay-scales were revised with effect from 1.1.1986 on the basis of the award passed by the Arbitrator Shri G.S. Barot and the same was accepted by all the petitioners by giving a written consent/option and the aforesaid facts have not been stated by the petitioners in the petition. It is also further submitted by Shri Raval that there is no decision taken by the Corporation to accept the pay-scale of the State Government. It is also further submitted by Shri Raval that when service conditions are different then there is no question of anomaly or injustice being suffered by the petitioners, vis-a-vis the State employees. It is also submitted by Shri Raval that once the petitioners had accepted the pay-scale as per the award given by the arbitrator Shri G.S. Barot they cannot be permitted to agitate the question with regard to pay-scale at a belated stage as the same was accepted as far back as on 1986-1987. Shri Dipak Raval has relied upon the Judgment of the Hon'ble Supreme Court in the case of State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association, reported in AIR 2002 S.C. Page 2589, and in the case of State of Bihar and Others Vs. Secretariat Press Ministerial Staff Union & Others, reported in AIR 2002 S.C. 2002, Page 2145 in support of his contention that when the service conditions and nature of duties are different and source of income is different, then the petitioners cannot claim the same pay-scale which is being paid to the State Government employees and

therefore requested to dismiss the aforesaid Special Civil Application.

6. I have heard the learned advocates appearing on behalf of the parties. The petitioners have not stated the correct facts before this Court. The petitioners had suppressed the fact with regard to passing of award by the Arbitrator,Shri G.S. Barot in the year 1986-1987. The petitioners have also suppressed the fact that they have accepted the award given by the Arbitrator,Shri G.S. Barot and they have given their written option with regard to accepting the same with effect from 1.1.1986 also. In that view of the matter, as such the petitioners are not required to be heard on merits. However, even considering the fact that when the petitioners have accepted the pay-scales as determined in the award passed by the Arbitrator, Shri G.S. Barot, it is not open for the petitioners to ask for another pay-scale in absence of any challenge to the award passed by the Arbitrator, Shri G.S. Barot. From the record, it is clear that there is no decision taken by the respondent Corporation accepting the pay-scale paid to the State Government employees. On the contrary, the Arbitrator was appointed to take a decision with regard to revision of pay-scale and Shri G.S. Barot, learned Arbitrator passed the award by which pay-scales as on 1.1.1986 were revised and the Nursing Tutor staff were put in the pay-scale of Rs. 1400-2380 which came to be accepted by the petitioners. Now, merely because subsequently the State Government has revised the pay-scale of the Nursing Tutor staff from Rs. 455-700 to Rs. 1640-2900,it is not open for the petitioners to claim the same pay-scale. It is pertinent to note that when the petitioners accepted the pay-scale of Rs. 1400-2380, the petitioners did not claim parity of pay-scale with that of the employees of the State Government. However, when they found subsequently that the State Government employees are getting higher pay-scale, then they decided to file the present Special Civil Application, which, in the facts and circumstances of the case, is not permissible.

In the case of State of Haryana (Supra), it was prayed by the Haryana Civil Secretariat Personal Staff Association in the writ petition directing the respondents to grant the Personal Assistants the pay-scale of Rs. 2000-3500 plus Rs. 150 as Special Pay which have been given to the Personal Assistants working in the Central Secretariat for the reason that the State of Haryana had accepted the recommendations made by Fourth Central Pay Commission with regard to revision of

pay-scales with effect from 1-1-1986 with all consequential benefits like fixation of pay, arrears and other benefits. The High Court, while placing reliance on the principle of 'equal pay for equal work' allowed the Special Civil Application and while allowing the Special Civil Application proceeded on the assumption that Personal Assistants serving in the Civil Secretariat are discharging the duties and responsibilities similar to those of Personal Assistants in the Central Secretariat for the simple reason that averment to the effect in the writ petition was not rebutted by the respondents. In an appeal before the Hon'ble Supreme Court of India, the Supreme Court held that:-

> "Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter several relevant factors, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government Courts have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the Courts cannot entertain any proceeding against such administrative decision taken by the Government. The Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the Court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a

declaration granting a particular scale of pay and compelling the Government to implement the same."

In State of Bihar Vs. Secretariat Press Ministerial Staff Union (Supra), the Hon'ble Supreme Court has held "When it comes to the question of pay-scales and pay benefits, the recommendation of the expert body like Pay Commission, the pay structure adopted by the Government pursuant to such recommendation, the questions regarding equivalence of posts, the nature of duties and responsibilities attached to the relevant posts are all matters that have to be considered by the Court." In the present case, though the petitioners have stated that their duties are similar to that of Nursing Tutor staff of State Government. The said factum has been denied by the respondents in the affidavit-in-reply. Nothing is produced on record to show and prove that the service conditions of the Corporation employees and V.S. Hospital employees are identical with State Government employees. Nothing is on record to prove that the duties which are performed by the petitioners, i.e., Corporation employees and V.S. Hospital employees are identical with State Government employees. In absence of any material on record, it will not be proper for this Court to grant any relief with regard to the parity in the pay-scale and grant them the pay-scales which are available to the State Government employees. Whether the service conditions and nature of duties of the Corporation employees and V.S. Hospital employees are identical or not is a disputed question of fact which can be proved on proper appreciation of facts and leading evidence before appropriate forum. The said question cannot be decided in a petition under Article 226 of the Constitution of India. The petitioners were given a particular pay-scale by the Municipal Corporation as well as the V.S. Hospital Trust on the basis of the award of the learned Arbitrator, Shri G.S. Barot which the petitioners have accepted. Therefore, it is also not open for the petitioners to claim another pay-scale at par with the State Government employees. Even otherwise, considering the aforesaid two Judgments of the Hon'ble Supreme Court of India, the relief which has been prayed by the petitioners in the present Special Civil Application cannot be granted by this Court exercising the power under Article 226 of the Constitution of India.

7. In view of the aforesaid facts and circumstances of the case, the petitioners have not made out any case for any relief which is prayed for in the present Special

Civil Application and the present Special Civil Application is required to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs.

rmr. [M.R. Shah, J.]